IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 8957 of 2004

Between:

Boggarapu Mahalakshmamma, W/o. Pullaiah Setty,
R/o. 5/201, Sunkulammapet, Nandyal, Kurnool District.

..... PETITIONER

AND

1 The Nandyal Municipality, Rep. by its Commissioner Nandyal,
Kurnool District.
2 Director of Municipality Administration, Hyderabad.

3 M. Raja Gopal Setty, S/o Ramaiah Setty, M.H.S. Road, Nandyal,

Kurnool District.

4 The Lions Club, Nandyal, rep. By its President A. Sudershanam

Chetty, S/o A. Nagabhushanam Chety, Nandyal, Kurnool.

(Respondents 3 and 4 are impleaded as per Court order dated

28.09.2004 in W.P.M.P.No.13646 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the North East Portion of her house No.5/201 Sunkulammapet, Nandyal, Kurnool District in an extent of 12 sq. yards in spite of her request to assign the said disputed site which is not useful to any body including the respondent municipality the assignment of which is not objectionable to the municipality as per the endorsement note by the Engineering Department as illegal, arbitrary, malafide, and against the principles of natural justice and to consequently direct the respondent

municipality not to demolish her structure in the disputed site of 12 sq. yards.

Counsel for the Petitioner: MR.K.JYOTHI PRASAD

Counsel for the Respondent No.2.: GP FOR MUNCIPAL ADMN. & URBAN DEV.

Counsel for the Respondent NO.1 : Mr. K.M.Mahender Reddy(S.C. for Municipality)

Counsel for Respondents 3 and 4 : Mr. K. Soma Konda Reddy

The Court at the stage of admission made the following ORDER:

Heard learned counsel on either side.

Petitioner, by way of this writ petition filed under Article 226 of the Constitution of India, seeks a *mandamus* restraining the respondents from attempting to demolish the North East portion of her house in an extent of 12 sq. yards of land situated in Sunkulammapet, Nandyal and to consider her request to assign the said land in her favour.

The relevant facts, briefly, are as follows:

Petitioner is having house bearing D.No.5/201 at Sumkulammapet, Nandyal, which was extended to the North East corner. Claiming that the said North East portion site, the extended portion of the house belongs to them, the Municipal authorities are attempting to demolish the said extended portion, for which, the husband of the petitioner filed O.S.No.79 of 1993 on the file of Principal District Munsif, Nandyal for permanent injunction restraining the Municipality from demolishing the extended portion of their house towards the North East Corner and the same was dismissed holding that the disputed site belongs to the

Municipality. Dissatisfied with the dismissal order, the husband of the petitioner filed A.S.No.19 of 1988 on the file of Additional Senior Civil Judge, Nandyal, which met the same fate. It is further stated that in the disputed site, there was a bore-well, which has become defunct and the same is not useful to the respondents in any manner. Therefore, the petitioner submitted an application to the respondent-Municipality to assign the said site to her on payment of compensation and the same was placed before the Municipal Council along with the note of the Engineering Department of the respondent Municipality, wherein it was stated that there is absolutely no objection for assignment of the said land to the petitioner. The Council, in its meeting held on 27.03.2004, passed a resolution rejecting her claim holding that the bore-well in the said site would be useful to the public and directed the authorities to get the same repaired. Consequently, first respondent issued notice dated 26.04.2004 calling upon the petitioner to demolish the structure in the disputed site. She also came to know that the respondent-Municipality is trying to demolish the structure. Hence, she filed this writ petition seeking direction to the respondents not to demolish the structure in the North East portion of her house and to assign the said site in her favour in view of the fact that the said small extent of site is not useful either to the respondent-Municipality or to the public and also in view of the fact that the bore-well in it has become defunct long time back.

The first respondent filed his counter-affidavit denying the allegations made in the writ petition. It is stated that there is a bore-well in the disputed site, which belongs to the Municipality and as the husband of the petitioner encroached the same by erecting a pillar adjacent to it, the bore-well was not used by the public. Hence, the Municipality issued notice to the husband of the petitioner under Section 192 of A.P. Municipalities Act on 6.4.1993 for removal of encroachment. Earlier, the bore-well is used by the public for drawing the water. The Municipal Council, in the interest of public only, passed the resolution rejecting the representation of the petitioner for assignment of the disputed site.

Learned counsel for the petitioner, while reiterating the averments made in the writ petition, contends that the bore-well was not functioning for the last several years and it is no longer useful to the public or to the respondent-Municipality.

He further contends that the respondent-Municipality issued notice to the petitioner calling upon her to demolish the structures in the disputed site, which is highly illegal and arbitrary and in view of the same, the respondents may be directed to consider the application submitted by the petitioner for assignment of the disputed site in her favour.

Learned standing counsel appearing on behalf of the respondent-Municipality, on the other hand, contends that the said bore-well was highhandedly closed by the petitioner's husband by erecting a pillar adjacent to it and not allowing either the public or the Municipality to use the bore-well under the guise of interim orders obtained from this Court.

Considering the submissions made on either side and going through the material available on record, it is seen that the suit as well as the appeal filed by the husband of the petitioner were dismissed on the ground that the husband of the petitioner high-handedly closed the bore-well which was dug for the benefit of public.

In this case, the interest of the individual is pitted against the general public at large. The paramount consideration, in such cases, would be the requirement of the public at large rather than an individual, which disentitles the petitioner to claim any relief. It is well settled that all natural resources and public properties have to be utilised for the benefit of the general public at large and one individual cannot derive the same depriving the others.

In view of the same, the contention of the learned counsel for the petitioner that the petitioner is entitled for assignment of the land in question on payment of market value, cannot be accepted. I see no immunity in the notice issued by the Municipality for removal of the encroachment.

Accordingly, the writ petition is dismissed. Petitioner is granted three weeks' time from today to remove the encroachment made in the site in question and handover the same to the Municipality for public use.

30—09—2004.

ksld

To

1. The Commissioner, Nandyal Municipality, Nandyal,
Kurnool District.
2. Director of Municipality Administration, Hyderabad.

3. 2 CCs. to the Government Pleader for Municipal Administration, High Court Buildings, Hyderabad (OUT)

4. Two CD copies.